

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/W/72

16 September 1985

Special Distribution

Committee on Government Procurement

ARTICLE IX:6(B) NEGOTIATIONS

Initial Analysis by the Secretariat of Submissions Made in the Area of Service Contracts

1. Article IX:6(b) requires that "Not later than the end of the third year from the entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to broadening and improving this Agreement on the basis of mutual reciprocity, having regard to the provisions of Article III relating to developing countries. In this connection, the Committee shall, at an early stage, explore the possibilities of expanding the coverage of this Agreement to include service contracts."

2. At its meeting of 19 June 1985 the Committee agreed that in order to provide a basis for its work in the autumn of 1985, the secretariat be asked to look into the submissions made in the area of service contracts in order to see what kind of analytical work might usefully be undertaken (GPR/M/18, paragraph 19). This paper has been drawn up in response to this request.

3. It brings together a summary of information supplied by ten Parties concerning insurance and architectural and consulting engineering services (GPR/W/66 and 67 series), a summary of information from three Parties concerning management consulting services (GPR/W/70 series) and a summary of information from two Parties concerning freight forwarding services (GPR/W/71 and GPR/W/70/Add.1). The note also sets out a number of questions concerning the applicability of relevant provisions of the Agreement to the types of services which are being studied in the context of the ongoing Article IX:6(b) negotiations. In preparing this paper, the secretariat has taken into account comments made at the June 1985 meeting of the Committee (GPR/M/18, item A). The contents are presented under the following headings:

	<u>Page</u>
I. Introduction	2
II. Definitions	3
III. Scope and Coverage	4
(a) Entity lists	4
(b) Typical threshold values	4
(c) Estimated value/actual threshold value	6
(d) Splitting-up of contracts	7
(e) "Best-Endeavours Clause"	8
IV. National Treatment and Non-Discrimination	8
V. Special and Differential Treatment for Developing Countries	10

	<u>Page</u>
VI. Tendering Procedures	10
(a) Procurement techniques	10
(b) Qualification procedures	11
(c) Time limits	12
(d) Notice of proposed purchase/tender documentation	13
(e) Submission, receipt and opening of tenders and awarding of contracts	14
(f) Use of single tendering	15
VII. Technical Specifications	16
VIII. Determination of Origin	16

I. Introduction

4. It will be recalled that Article I:1(a) stipulates that:

"This Agreement applies to:

- (a) any law, regulation, procedure and practice regarding the procurement of products by the entities subject to this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts per se."

5. At the May 1985 meeting of the Committee, one Party proposed the collection of information on how Parties treat Code-covered contracts which included both goods and services (GPR/M/16, paragraph 32). Replies given orally at that meeting, as well as at the June 1985 meeting (GPR/M/18, paragraphs 12-13) indicate that a particular procurement is generally deemed to be for goods as long as the service component is less than 50 per cent of the contract value. The Party which raised this question added that the information it sought "was qualitative rather than quantitative, namely the types of services considered to be incidental to goods" (GPR/M/18, paragraph 13).

6. If the coverage of service contracts is to be increased, the present language of Article I:1(a) would need to be changed. The following are among the theoretical possibilities:

- (i) broadening the present coverage of services (at present included if they account for less than 50 per cent of the value of the contract) by increasing this percentage;
- (ii) making the Agreement applicable to the procurement of certain services, either when procured by all Code-covered entities or when procured by some of them. It might also be envisaged that some entities would be covered in respect of some service contracts and other entities in respect of others;
- (iii) making the Agreement applicable to the procurement of services as such.

II. Definitions

(i) Information provided

7. The replies received indicate that there could be many possible definitions even of each individual type of service. Definitions provided are contained in Annex I.

8. The replies seem to show that in particular architectural and consulting engineering but also management consulting can involve a wide variety of general or specialized services. It should be noted, in addition, that in the case of the latter activity only two Parties have provided definitions. In the case of the former, in particular, the definitions appear sometimes to have been tailored to the other questions that were to be answered and thus perhaps may also reflect the need to define the national data collection exercise.

9. With respect to insurance, the State ~~is normally self-insured~~ in all countries which have replied¹, but exceptions have been noted by some. As indicated in Annex I, these concern automobiles (Canada, Japan, Norway); health (Canada, United States); life (Canada); management (Canada); disability (Canada); certain specialized equipment (Norway); catastrophe and marine coverage (Israel). Three countries (Belgium, Denmark, Switzerland) have stated that any exceptions are very rare or concern only a negligible volume. One of these (Belgium) added that the exception concerns the building sector, but such contracts are concluded not by the administration but by the building contractor. One country (United Kingdom) stated that "there can be circumstances where, because of the additional manpower costs of dealing with claims, or because of the additional "service element" to which the holder of an insurance policy can sometimes be entitled, there are advantages to a government body in taking out insurance. Nevertheless, the amount of commercial insurance remains small. Although some small increase in the amount of commercial insurance is possible in future year, the commercial implication of including insurance in the Agreement would be comparatively insignificant." One Party has indicated that one insurance contract (unspecified) was awarded in 1984 (United Kingdom for Hong Kong).

10. Only one Party (United States) has provided a definition of freight forwarding services.

(ii) Some questions raised by submissions

11. Agreed definitions might be required in the event that any service sector, or part thereof, were to become Code-covered. One approach would be to leave it to each Party to "offer" definitions of service sectors, for possible inclusion, e.g. in their respective entity lists which, according to Article IX:1, shall be "agreed lists".

¹Canada, EEC (Belgium, Denmark, Germany F.R., Ireland, United Kingdom), Finland, Israel, Japan, Norway, Switzerland, United States.

III. Scope and coverage

(a) Entity lists

(i) Information provided

12. Although the data received is incomplete, the procurement of services appears often to be concentrated on certain entities. Some such entities are presently not covered by the Agreement.

13. With respect to architectural and consulting engineering services, overall annual figures given by three countries (Norway, Sweden, United Kingdom) (reference: GPR/W/67, pages 3 and 4 and Add.1, page 6, respectively,) indicate that this is in fact true in their case. It might be noted that in the first-mentioned Party, the functions of administering constructions of government-owned buildings as well as procuring consulting engineering services, belongs to a government directorate not covered by the Agreement (only two Code-covered entities lie outside the scope of the said directorate). Other replies do not give data permitting comparison on an entity-to-entity basis. It might be added, however, that one reply (by Israel) refers to only one Code-covered entity, that the Code-covered entity in one Party (United Kingdom for Hong Kong) has no dealings with such contracts, whereas in one country (Ireland) the State has recourse to firms in the private sector for such services only on some occasions, i.e. for specific large on-off projects.

14. Insurance contracts (of different sorts and to the extent the State is not self-insured) have in five cases (Belgium, Canada (in respect of vehicles), Israel, United Kingdom for Hong Kong, United States) been concluded by only one entity, by two entities in one country (Sweden), by four entities to any significant extent in another (United Kingdom), by five in one country (Norway), by an unspecified number of entities in two others (Canada, Japan).

15. Two replies (Sweden, United States) indicate that management consulting services are widely procured by government entities. Entity figures for one of these (Sweden), indicate that values are concentrated in a few entities. In another country (Canada), a special agency serves the needs of government managers in other government entities on a cost-recovery free-for-service basis.

16. In one Party (United States) three principal agencies use or arrange for the use of freight forwarders. In the other country which has replied (Sweden) procurement of freight forwarding occurs only in a small number of entities.

(ii) Some questions raised by submissions

17. No modifications to the entity lists would be required if the Agreement were simply to be extended to the procurement of services. If other approaches set out in paragraph 6 above were to be adopted, some modifications to the entity lists might be required.

(b) Typical threshold values

18. Article I:1(b), first sentence, makes the Agreement applicable to "(b) any procurement contract of a value of SDR 150,000 or more".

(i) Information provided

19. Concerning architectural and consulting engineering replies to question E.1 in the questionnaire indicate that in one Party (United States) the majority of contracts (totalling ca. SDR 1,260 million in 1982) exceed the threshold of the Agreement. One Party's total above-threshold procurement of these services amounted to ca. SDR 20 million in financial year 1983 (Japan). Some Parties reported that the bulk of procurement or the typical value fell below the threshold (Canada, Denmark, France). Others were not in a position to give a typical value (Israel, Japan, Netherlands, United Kingdom). It was generally noted that the range of contract values varied considerably, from quite small amounts to figures well above the present threshold, depending on factors such as contract coverage and the magnitude of the work order and that projects differed from one year to another. One country (Netherlands) stated that contract values in both architectural and consulting engineering could be extremely high. One country (Sweden) gave figures which were generally higher for consulting engineering than for architectural services. One country (Belgium) stated that there appeared to be more contracts in the building sector, but of smaller value, than contracts in the communications sector.

20. With respect to insurance, in one country (United States) health insurance contracts range from a few thousand to about US\$125 million, with a median contract value of less than the actual threshold; the life insurance contract is approximately US\$860,000; the contract for the administration of the flood insurance programme is US\$27 million, and the contract for the administration of the crime insurance programme is US\$7 million. One country (Netherlands) has stated that there is no such thing as typical contracts, but their values are small. In one country (Canada) premiums for three plans together (health, management and disability insurance) totalled approximately SDR 130 million whereas total premiums for fleet insurance policies were about SDR 140,000 (in 1983). One country (United Kingdom) has noted that while the numbers are small, the values for a large department tend to be high. One country (Japan) has indicated total annual figures for all entities combined well below the threshold. In two countries for which data was available (Norway, Sweden) the total annual amounts exceeded the threshold (in 1983) in only one entity.

21. In respect of management consulting services and freight forwarding one Party (Sweden) has stated that with the exception of one entity the maximum amounts of individual contracts are lower than the threshold value of goods; average amounts are, in general, significantly lower. In one Party, however, (United States) the bulk of government contracts are typically above the threshold value in management consulting. Whereas with respect to freight forwarding the situation is different from one entity to another (reference GPR/W/71, item E.1). In one Party (Canada) the typical value in management consulting is well below the threshold of the Agreement, with some contracts valued up to approximately the threshold.

(ii) Some questions raised by submissions

22. One question that might need to be discussed is whether the Agreement's threshold value is appropriate in the area of services.

(c) Estimated value/actual threshold value(i) Information provided

23. Questions D.1-3 in the questionnaire may be relevant as they deal with issues and possible ambiguity concerning the valuation of a contract in case of open-ended work, multi-year contracts or for any other reason. The replies indicate that generally in all the service sectors considered open-ended work or multi-year contracts are either not used or, where they occur, few problems of valuation have been mentioned. However, among ambiguities with respect to the valuation of architectural and consulting engineering contracts, one (Netherlands) has noted that problems exist in defining the value of existing and running contracts (consulting engineering) and in defining the value of large multi-year contracts (architectural services). One (United Kingdom) has noted that it is difficult to establish the price at the time of commissioning; fees are currently paid on set scales which depend on the value of the work assessed at tender stage. Before the project is begun fees can only be assessed as a percentage of an estimate of the cost of the project. This Government "is in the process of changing from a set scale of fees system to one based on competitive/negotiated fees, but the difficulty of estimating the value of the service at the time of commissioning will remain". One country (Sweden) has indicated that some entities have problems in identifying the service share of contracts where supply of goods is also involved and that problems concerning advance valuation of final value sometimes exist because of the complexity of work involved, when services have the character of studies and also because "the first effort aims, among other things, precisely at establishing such an estimate".

24. Some of the replies specify that there is no ambiguity, for instance because "the payment is normally done according to a definite invoicing with maximum price limits" (Finland). One Party will sometimes (also in the case of management consulting) "award contracts for open-ended work and multi-year contracts referred to as indefinite quantity contracts. In these cases, the government may specify a dollar ceiling for any individual work order and a maximum number of hours that can accumulate under the contract. Before each work order can be completed, however, the contractor must enter into specific negotiations as to the number of hours necessary to complete the work to be carried on" (United States). One reply (Canada) notes that "for consulting and professional services contracts, the value of the contract will be determined by the basis specified in the contract on which a consultant or expert is to be paid (this also applies to management consulting). For architectural or engineering services, the basis for payment will generally be a percentage of the estimated or contract cost of the construction work". In another country (Belgium), the value is also "expressed as a percentage of the cost". One country (Israel) sees no ambiguities as "the value of the contract corresponds to the stage of implementation of the project and the payments done according to the relevant executed phase of the project". One country (France) notes the "in the context of the 1973 regulations, remuneration is no longer determined a posteriori in relation with the cost actually recorded, but a priori in relation with a 'target cost', to which the engineering designer commits himself - allowing for a certain margin of accuracy. If that cost is reached, he receives maximum remuneration. To avoid over-estimating, if the cost of the project is less than that forecast, the amount of remuneration is reduced slightly. If the estimate is exceeded, the fees are reduced in proportion to the excess but with a higher adjustment rate than in the first case".

25. Concerning freight forwarding, one Party (United States) sees "an ambiguity as to the value of qualifying as a contractor since the number and value of requests for services during the period qualified for is not known. There is little doubt as to the value of performing a specific service, i.e. arranging the transportation of specific goods between two points under a discrete contract".

26. With respect to insurance one country (Netherlands) has indicated difficulty in determining the value of a contract because of its open-ended nature, frequently with provision for intermediate revisions. One country (Canada) suggests that the amount of premiums is an appropriate basis for determining contract value, whilst another country (United States) considers that there are several questions regarding valuation of insurance contracts. "Should they be valued based on the level of benefits, premiums, or administrative expenses allowed to the contractor? Should the value include solely payments by the government or should it include co-payments by employees?" This Government bases contract value on the government contribution for administrative costs plus profit. In addition, some replies indicated that various services under study can be furnished on a contract or fee basis.

(ii) Some questions raised by submissions

27. It is not always clear whether the replies deal with the value of contracts for threshold purposes or for statistical purposes. The problem of estimated value/contract value is one which has been taken up in the Informal Working Group, with respect to the procurement of products. It is recalled that the Informal Working Group has suggested, ad referendum, an additional footnote to the first sentence of Article I:1(b), as follows:

"The Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed [150,000] [75,000] SDRs at the time of publication of the notice in accordance with Article V:3."

(d) Splitting-up of contracts

28. Article I:1(b) provides that "no procurement requirement shall be divided with the intent of reducing the value of the resulting contracts below SDR 150,000. If an individual requirement for the procurement of a product or products of the same type results in the award of more than one contract or in contracts being awarded in separate parts, the value of these recurring contracts in the twelve months subsequent to the initial contract shall be the basis for the application of this Agreement". The question of recurring purchases (contracts split up timewise), is also dealt with in Articles V:10(d) (time-limits¹) and V:15(d) (additional deliveries under single tendering). The basis for the application of the Agreement in cases of recurring procurement is being discussed in the improvement exercise under Article IX:6(b).

(i) Information provided

29. In the case of architectural and consulting engineering, it has been noted that organizational, supervisory and coordination assignments may, for example, sometimes be carried out either by the contracting authority

¹ For time-limits: see also item VI(c) below.

itself or by a private specialist (not the general contractor) under a specific contract (France). According to one reply (United States) design firms may participate only in the design phase of a project. Services may be for new projects or for the alteration or repair of existing buildings or facilities (United States). One country (Belgium) has noted that extensions of existing development contracts represent almost the double of new development contracts. Advisory services may be of a continuing (i.e. recurring) nature or for particular projects or problems. One entity in one country (United Kingdom) "normally places a "term commission" - a type of call-off contract - where a number of small value projects are expected to arise over a period within a fairly small area. Term commissions are let for a specified period, normally up to two years, and are subject to financial limits on both the fees for any one project, and on the estimated annual fee value of all projects on which services are to be provided (currently £10,000 and £100,000 respectively)". Some services may be carried out either by the project owner or by independent specialized bodies which can be public or private (France in the case of architectural and consulting engineering; Canada in the case of management consulting).

(ii) Some questions raised by submissions

30. The replies do not treat systematically the question of splitting-up of contracts into different elements or timewise (i.e recurring contracts). Further information might be needed in order to verify whether particular problems exist in service sectors which do not exist in the procurement of goods. For instance, the variety of specialized services which are offered in some fields (see Annex) could mean that it would be easier to split certain service contracts in order to avoid the threshold than to split products contracts.

(e) "Best-Endeavours Clause"

(i) Information provided

31. It has already been mentioned that non-Code covered entities procure services, according to some replies.

(ii) Some questions raised by submissions

32. Article I:2 refers to the "principle and rules of this Agreement" and "the overall benefits of liberalization of government procurement". Given the general language used, this provision might not need to be changed if service contracts were Code-covered.

IV. National Treatment and Non-Discrimination

33. Article II of the Agreement (paragraphs 1 and 2) provides that:

"1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall provide immediately and unconditionally to the products and suppliers of other Parties offering products originating within the customs territories (including free zones) of the Parties, treatment no less favourable than:

- (a) that accorded to domestic products and suppliers; and
- (b) that accorded to products and suppliers of any other Party.

2. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, and other import regulations and formalities."

(i) Information provided

34. Question II:F in the questionnaire dealt with "practices that affect foreign access to government contracts in the service area".

35. One matter mentioned in several submissions is discrimination by way of laws or regulations in favour of domestic or local firms.

36. Examples are:

- in architecture and consulting engineering: only authorized architects are allowed to design buildings in general or supervise construction. Foreigners can obtain authorization upon ministerial approval (Japan); nationals and foreigners exercising the profession of architect abroad and wishing to exercise their profession in the country concerned, on an occasional basis, are normally required to obtain prior authorization from a Council of an Institute of Architects (Belgium); resident firms shall be given first consideration (Canada); for certain services the personnel contracted have to be national citizens (one Swedish entity); generally, only architect/engineer firms in the geographic area of the project are considered, with exceptions made to accommodate special projects (United States); set-asides for small business (United States)¹;
- in insurance: legislation on e.g. right to establishment and control of national insurance companies (Canada - for details see GPR/W/66, page 9); strict security rules; acting personnel has to be nationals; some information requires acceptance by a Data Inspection Board in order for it to be transferred abroad for further handling or processing (Sweden, some entities); a foreign insurer must be licensed in an individual state (United States);
- in management consulting: resident firms shall be given first consideration (Canada); security clearance, set-asides for small business¹ (United States); national security consideration (Sweden);
- in freight forwarding: authority for foreign firms to serve as air-freight forwarders is granted in return of reciprocal privileges by the government of the applicant company (United States).

37. Some replies concerning architectural and consulting engineering services point to practices by entities whereby competition is normally limited to national companies or whereby foreigners at least may be at a disadvantage.

¹With respect to products, this is subject to a "derogation" in the relevant entity list in Annex I of the Agreement.

38. Examples are: offers sought abroad only if there is no available resident firm (Israel); no requirement to publish invitations to tender (France); secrecy, or security requirements and defence and preparedness interests (Sweden)¹; public competitions are generally limited to all or part of the national territory; for competitions by invitation, foreign firms can be included where the nature of the project so warrants (Switzerland).

(ii) Some questions raised by submissions

39. Article I:1 and 2 refer to "products" and would need amendment if services were to be covered.

V. Special and Differential Treatment for Developing Countries

40. As quoted in paragraph 1 above, the negotiations under Article IX:6(b) shall be undertaken, "having regard to the provisions of Article III relating to developing countries".

41. A proposal concerning technical assistance by way of translation of bids and pre-qualification documents is being discussed in the Informal Working Group.

VI. Tendering Procedures²

(a) Procurement techniques (Article V:1)

(i) Information provided

42. In architectural and consulting engineering, selective and single tendering are most often used according to the various replies received. In some countries the former, in others the latter is predominant. Open tendering has been mentioned by a few Parties in this area.

43. Insurance contracts appear generally to be concluded through selective procedures but also single tender, occasionally brokers, are used. Terms and conditions are at least in some countries renegotiated periodically.

44. One Party has stated with respect to management consulting services, that the procedures used are consistent with those required by the Agreement, the two methods being full and open competition which involves publication of an announcement, and a sole source procedure, used when the services required are available only from one responsible source and no other type of service will satisfy agency requirements. In another Party most often open but also selective procedures are employed.

45. In freight forwarding, one Party uses open or selective procedures, apparently depending upon the entity. The other Party which has reported mentions two widely varying procedures. One entity seeks a single contractor to arrange the transportation element of the programme that provides emergency food shipments to various countries. Two other entities

¹This type of restriction may fall under Article VIII of the Agreement which is not dealt with in this note.

²The following section deals with provisions of Article V of the Agreement except paragraphs 8, 11, 13 and 16 which appear to fall outside the scope of the replies sought in the pilot studies.

have hundreds of qualified freight forwarders that provide forwarding services on request for discrete movements (four filing windows per year and tenders offers to provide services are for six months). One of these entities has a single freight forwarder under contract for one year for international shipments, (for details see GPR/W/71, pages 2-4).

(ii) Some questions raised by submissions

46. Generally, "open tendering", "selective tendering" or "single tendering" are referred to in the submissions. However, "negotiated tendering" or "negotiations" are mentioned in a number of submissions, particularly with regard to architectural or consulting engineering services and insurance. Delegations might wish to consider how these relate to the provisions of Article V:1. It might in this connection be noted that in the improvement exercise under Article IX:6(b) it has been suggested that present single tendering category be split into two, i.e. a negotiated procedure and a single source procedure, and that a new provision be added (to Article V:11) restricting the use of option clauses to purchase additional goods.

(b) Qualification procedures (Article V:2 and V:5-7)

(i) Information provided

47. The questionnaire sought information on procedures used to procure the service and criteria for evaluating and choosing bids. Qualification of suppliers in selective tendering procedures were not specifically mentioned. Some information has been given, however. Concerning architectural and consulting engineering services the dominant criterion in one country (France) is always architectural quality and technical reliability. Additional criteria concern evaluation of target cost, complexity rating and amount of remuneration as well as time-limit for preparing the documents studied. In one country (United Kingdom) public sector bodies award commissions on the basis of reputation, proven ability and financial soundness. Consultants must be members of the appropriate national professional institution in order that they may be eligible to carry out work for Government departments. Where a project is to be designed and built abroad, however, consultants from that country may be used. The first step in procurement of these services in another country (United States) is in the publication of a notice describing the intended procurement. Any firm wishing to prequalify in response to the notice must submit two forms which contain background information on the firm's financial status, past experience, professional capability, etc. One country (Sweden) has noted that foreign accession can be affected by qualification requirements concerning suppliers, including in some cases inspection of products and visits of company; tax and credit-worthiness control; qualified local representative in the respective fields of activity.

48. Concerning insurance, one reply (United States) stated that procedures used for purchasing the service of administering the flood and crime insurance are essentially the same as those provided for in the Agreement. Companies wishing to be involved in the Flood Insurance Programme (under a "write your own" aspect thereof) sign up one time and are authorized to participate as long as they wish. The key criteria in one procuring entity is the reliability of the insurer and its past corporate record.

49. Concerning management consulting, one country has stated that the procedures used are consistent with those required by the Agreement (for details see GPR/W/70, pages 3-4).

50. Concerning freight forwarding, one country (United States) has explained that one entity seeks a single contractor whereas two others have hundreds of qualified freight forwarders. The detailed reply (GPR/W/71, pages 2-4) is not reproduced here as it is not always quite clear where the information refers to qualification procedures or the subsequent selection and award process. However, it is stated that companies could obtain information from entities on the dates for submission of applications to qualify and begin planning, and preparation of paperwork, well in advance of even the formal bid announcement.

51. Generally, a number of replies show that companies would often not be selected - and, by implication not become pre-qualified - if they are not resident firms or have local representation. (See also under National Treatment and Non-Discrimination above.)

52. Sub-contracting is not explicitly dealt with in the present Agreement except with respect to time limits (see under V(c) below). Some countries require approval of sub-contractors as well of the primary contractor both in architectural, consulting engineering and management consulting. In one country the primary contractor must identify its sub-contractors at the time of bidding. These sub-contractors must have appropriate licences and qualifications and if during the contracting period the primary contractor changes sub-contractors, the Government must approve the change. In one country the sub-contractor must submit technical and cost proposals that will be analysed. Insurance involves sub-contracting when the risk is reinsured by the underwriter.

53. Freight forwarding involves sub-contracting according to one reply, in the sense that the forwarder contracts with the actual carrier for the transportation. The freight forwarder may also contract for other services which he agrees to provide. Also, if a freight forwarder files to transport cargo, it must name his underlying carriers which must be acceptable to the entity concerned in accordance with existing national regulations.

(ii) Some questions raised by submissions

54. The relevant provisions of the Agreement are generally worded except for Article V:6(a)(i) which refers to "products". However, the extent to which these provisions are suitable in the various service areas is not clear on the basis of available data. One question is whether the treatment of subcontractors would require special provisions. It might also be recalled that qualification procedures are being discussed in the Informal Working Group and that one of the points mentioned under freight forwarding above appears relevant to its discussion of "Information Prior to Notice of Proposed Purchase", related to Article V:2.

(c) Time-limits (Article V:9-10)

(i) Information provided

55. Bid times vary widely. They often exceed the thirty days minimum required in the Agreement (and the forty/forty-five days minimum presently

discussed in the Informal Working Group). A range from one week to seven months has been mentioned in architectural and consulting engineering, where bid times depend on the complexity of the service required, administrative constraints and the tendering technique used. In insurance, from three weeks to two months has been mentioned; in management consulting, from one week to six months or more; in freight forwarding, from one day to six weeks, depending on the entity, in one reply.

56. Delivery times: information was not sought on this point in the questionnaire.

(ii) Some questions raised by submissions

57. The provisions on delivery times, contained in Article V:9, refer to "products" but might otherwise be sufficiently general to be made applicable to service contracts. It is recalled that a reference to "the complexity of the proposed purchase, the extent of sub-contracting anticipated, etc." presently to be found in Article V:9(a) with respect to bid times, has been suggested ad referendum by the Informal Working Group to be also inserted into Article V:9(b) concerning delivery times. The Group also is discussing time limits in recurring purchases.

58. Unanswered questions are why bid deadlines seem to be much shorter in some entities than in others and whether the requirement of the Agreement would cause difficulties in such cases. In this connection, it might be borne in mind that the replies cover all types of procedures, including single tendering, for which the thirty-day bid-time is not obligatory.

(d) Notice of proposed purchase/tender documentation (Article V:3, 4 and 12)

59. Article V:3 requires a notice of each proposed purchase to be published, in a listed publication, in either open or selective procedures. Articles V:4 and 12 list minimum information in tender notices and in tender documentation. Publication of a summary in a GATT language is also obligatory (paragraph 4).

(i) Information provided

60. Few submissions indicate whether presently tender notices are published in open or selective procedures and even less information is available on the content of notices or tender documentation. It might be presumed that at least when open competitive bidding is used, a prior notice is published. In architectural and consulting engineering services, one country (France) normally follows, for important or complex operations, a procedure of tendering with competition in response to a public invitation. On the other hand, for operations of small or medium importance and complexity, a procedure of negotiating a contract after competition is used. This procedure does not require public notice. One country (Switzerland) uses competition generally for medium-sized or major construction projects, "both public or by invitation". In one country (United States) the first step is to publish a notice describing the intended procurement. One other country (Canada) generally follows a competitive procedure, two other countries do it to some extent (Finland, Sweden). Little information is available on insurance, freight forwarding and management consulting, but at least two countries (Canada, United States) adhere to the principle of competition in the latter area, one

(United States) stating that its procedures are consistent with the Agreement.

61. Among criteria other than price mentioned in the submissions are:

- In respect of architectural and consulting engineering:

Professional qualifications and experience, capacity, reliability, ability for co-operation, creativity, sense of profitability and economy, financial soundness, location of firms, joint contracting (generally recommended in one country), diversification of competing firms, complexity rating, time-limits for preparing documents. (Some of the submissions mention that some contracts follow the rules of the International Union of Architects.)

- In respect of insurance:

Price, quality, reliability, past corporate record, local agent representation.

- In respect of management consulting:

Understanding of and responsiveness to the requirements (understanding of the objectives of the activity; responsiveness to scope, concept and time for performance); Technical adequacy of proposed approach (well organized, clean, concise proposal; logical, efficient scheduling of activities and events; knowledge of research techniques, data collection procedure and analyses); Technical personnel (experience in activity operations, maintenance and support; expertise in functional areas to be evaluated; educational background in related academic fields); organization and management (prior and on-going experience in related areas of activity; soundness of organizational structure and management support for this effort; prior and on-going experience in specific areas of activity).

- In respect of freight forwarding:

The standards used by the three entities in one Party on which data has been given are contained in GPR/W/71, pages 3 and 4.

(ii) Some questions raised by submissions

62. Article V:4 and 12 refers to "products" and would have to be amended if service contracts were to be covered. Otherwise, the replies do not indicate whether there would be any particular problems with applying the present provisions. It is a question, however, whether some of the criteria used in services would need to be spelled out in paragraph 12, and whether there are elements which would need to be specified in paragraph 4 in addition to those presently listed.

(e) Submission, receipt and opening of tenders and awarding of contracts

63. Article V:14 contains eight detailed sub-paragraphs on these matters.

(i) Information provided

64. The replies do not address Article V:14 matters as such.

65. One Party has noted that its procedures in management consulting are in conformity with the Agreement.

66. Some points made could be of relevance to one or more of the sub-paragraphs, notably (d), (e) and (g), to the extent that these provisions require, inter alia, and in that order: regularity of the openings of tenders consistent with the national treatment and non-discrimination provisions; the conformity of bids, at the time of opening, with the essential requirements of the notices or tender documentation; and equal consideration and treatment to all tenders within the competitive range in any negotiations subsequent to the evaluation process.

67. In architectural and consulting engineering services for instance, some procedures appear to exist which may or may not be considered selective procedures. It has been noted that selected companies may be interviewed as part of the evaluation process and that the selecting officer begins negotiations with the top firm selected. If these are not successful, negotiations begin with the second ranked firm, and so on. In some cases, reference has been made to "framework agreements", to a procedure of tendering with competition in one stage (selection on simplified summary preliminary draft) or two stages (first stage: selection of outline; second stage: selection on simplified summary preliminary draft), or a "simplified procedure" of negotiating a contract after competition, where competition can be limited to examining the references and capabilities of candidates. In the area of insurance, open-ended contracts exist where terms and conditions can be renegotiated periodically.

(ii) Some questions raised by submissions

68. From the above, it would seem that more information is needed before the applicability or otherwise of Article V:14 to service contracts - or the possible need for changes in some national practices - can be established. It is recalled that local representatives and resident or national firms may today get better treatment in the evaluation and award process than foreign firms.

(f) Use of single tendering (Article V:15)

(i) Information provided

69. Single tendering occurs frequently. A number of factors affecting foreign competition have been mentioned in particular. Apart from matters relating to laws and regulations and security/secretcy mentioned above, the following are among those listed:

- in architectural and consulting engineering services: propriety, patent, licence or exclusive rights problems, familiarity with national laws and administration, national standards, regulations, engineering specifications etc., language difficulties, local conditions, including geographical and environmental conditions and mode of living, service aspects, including easy geographical availability;

- in management consulting: availability of only one responsible source and no other type of service that satisfy requirements, geographic location, time involved in transmitting data; transfer of technology considerations, language problems, knowledge of administrative procedures and the public sector in general;
- in freight forwarding: geographic location, including the location of agents or correspondent freight forwarders; the extent of the firm's network of agents; licensing requirements.

(ii) Some questions raised by submissions

70. Article V:15 refers to "products" and a change would be necessary if services were to be covered. The present Article V:15 "exceptions" might be adequate but the precise language should be looked into to ensure that all modalities in the relevant service area are duly taken care of.

VII. Technical specifications (Article IV)

(i) Information provided

71. As stated above, some of the submissions have indicated technical specifications and full observance of all national regulations as matters that affect foreign access. (This applies also to registration/authorization of firms or persons which is, however, more a question of qualification in terms of Article V:2.)

(ii) Some questions raised by submissions

72. The present provisions refer to "products" and would therefore require redrafting if services were to be covered. A proposal in the Informal Working Group dealing with advice to entities in their preparation of specifications may also be considered relevant in the area of services.

VIII. Determination of origin

73. It has generally been noted that the rules of origin applied for goods under the Agreement (Article II:3) do not apply and that place of registration/residence of supplier/address or site of activities of the supplier could be an appropriate criterion. One reply concerning architectural and consulting engineering services suggests that where international firms are employed there could be technical difficulties if it was considered desirable to try to apportion where the work was actually done.

ANNEX I

Definitions

(a) ARCHITECTURAL AND CONSULTING ENGINEERING¹

CANADA

Architectural services
Engineering Consultants (construction)
Engineering Consultants (other)
Engineering services (NES)

EUROPEAN ECONOMIC COMMUNITY

— BELGIUM

Architectural services
Engineering consultancy services
Verification and control services

— DENMARK

Consulting services in connection with planning, design and control of construction activities on real estate.

- FRANCE

As defined in the relevant regulations, engineering and architectural services cover a vast area involving architecture and technology as well as economic matters, with a view to carrying out a building or civil engineering project or a construction comprising industrial components. The reply notes that private-law service undertakings can operate in a variety of sectors (architects - technical development offices - consultant engineers - engineering firms - building-sector technicians - interior designers, etc.), and that they carry out assignments with regard to specification, design, consultancy, assistance, verification, co-ordination, supervision, etc. The services referred to in the reply comprise determination of assignments in regard to assistance to the project owner in preparing and awarding works contracts, and assignments designed to allow better project management, works supervision, financial administration of contracts and acceptance proposals.

The reply mentions certain operations which it does not cover:

- specification studies (e.g. scheduling) which can be carried out either by the project owner if he has the means, or by independent specialized bodies (whether public or private);
- technical verification assignments consisting of opinions regarding the solidity of works and personal safety in the construction considered. Such assignments, which are compulsory

¹For more detailed information on sectors in which governments procure these services, references are made to GPR/W/67, page 2 (United States), GPR/W/67/Add.1, pages 2 and 3/4 (France and United Kingdom, respectively).

only where so stipulated by law, can be entrusted only to officially approved persons or bodies;

- organizational, supervisory and co-ordination assignments which concern on-site management and can be carried out either by the contracting authority under a specific contract or by the building contractor in the context of his works contract, or again by a private specialist in pursuance of a specific contract.

- FEDERAL REPUBLIC OF GERMANY; and IRELAND

Architectural and Engineering Services.

- NETHERLANDS

Consultant Engineering: development contracts for specific technical part of larger projects.

Architect Services: building plans and advice on building costs, quality organization and control.

- UNITED KINGDOM

Architecture:

- planning, designing or supervision of erection, construction, enlargement or alteration of buildings of any kind or nature.

Consulting Engineering:

- advisory services of a continuing nature or for particular projects or problems (e.g. inspection of production);
- preliminary investigations and feasibility reports on given project;
- preparation of detailed drawings, specifications and contract documents, and analysis of bids and recommendations thereon;
- supervision of construction, management and sometimes initial operation of project; and
- specialized design and development services (e.g. application of automatic controls to machinery or equipment).

It is noted that consulting engineers operate in any engineering field - civil, mechanical, electrical, electronic, industrial, etc.

ISRAEL

Design and supervision of construction.

JAPAN

Government entities do not maintain any definition for the purpose of the contracts of the architectural and consulting engineering services.

However, in some cases where an entity itself carries out a construction industry (business), it concludes a consignment contract with a specialist (including specialized companies) with respect to the plan of the operation (including investigation, planning and drafting), design (including basic design and implementing design), supervision, guiding, advising and so on.

SWEDEN

Among problems pointed to are difficulties in defining these services where they are not specified in the book-keeping, where different services are incorporated in group contracts or where architects and engineers work together and their integrated services may not be clearly distinguished. It is also noted that consulting engineering services is not always easy to distinguish from data services.

SWITZERLAND

Project studies, preparation of plans and general estimates, supervision of project implementation with co-ordination of activities, establishment of final accounts and documentation for completed work order, including architectural and engineering services (civil engineer and heating, ventilation, sanitary, air-conditioning, cooling and electrical engineers), including work of surveyors, geologists and consulting engineers in the building sectors (including technical installations), civil engineering and hydraulic engineering in the broad sense of the term.

UNITED STATES

Engineering, Architectural and Surveying Services are part of the United States architectural, engineering and construction industry. Services may be for new projects or for the alteration or repair of existing buildings or facilities.

As part of the overall process, architects and engineers work together to develop conceptual designs, feasibility studies, and project plans; engineers of appropriate disciplines, such as civil, mechanical and electrical, develop detailed project designs and engineering specifications. Except for site selection, layout (surveying) and foundation testing, the design phase is usually performed offsite.

While design firms may participate only in the design phase of the project, many firms also offer management services (selection and supervision of contractors on the behalf of project owners, to including scheduling, approval of design changes, inspection of completed work etc.). Design services typically account for 8-14 per cent of the cost of most major projects.

The Standard Industrial Classification (SIC) system, often used by government and private-sector data collection organizations, categorizes design services as indicated below:

SIC 891: Engineering, Architectural and Surveying Services

(includes establishments primarily performing service of a professional nature in the fields of engineering, architecture and land surveying.)

The American Institute of Architects, in conjunction with the American Consulting Engineers Council, has submitted extensive comments to the Technical Committee on Industrial Classification which suggests subdivisions for architectural, engineering and surveying services.

(b) INSURANCE

CANADA

Vehicles: The Government of Canada provides a world-wide third party only, fleet insurance policy covering all Crown-owned vehicles abroad with the exception of those operated under military agreements but including Canadian Forces Attaches Vehicles. The policy is renewed every two years and is administered for all Government Departments and Crown Agencies by the Department of External Affairs.

Health Insurance: The Group Surgical Medical Insurance Plan is a private health insurance plan sponsored by the Government of Canada for the benefit of its employees. The plan provides participants and their eligible dependents with insurance, up to reasonable limits, for unexpected expenses for specified medically-required services and items.

Management Insurance: The Public Service Management Insurance Plan is a private group plan which includes Life Insurance, Accidental Death and Dismemberment Insurance, Long-term Disability Insurance and Dependents Insurance for Public Servants not eligible for inclusion in Bargaining Units, Members of Parliament, and Judges.

Disability Insurance: The Disability Insurance Plan is a private group plan for the benefit of Public Service Employees eligible for inclusion in Bargaining units. The plan provides protection against loss of income due to long-term illness.

EUROPEAN ECONOMIC COMMUNITY

- NETHERLANDS

General definition: cover against payment of possible damage and other specified risks.

ISRAEL

Self insurance programme managed by Unbal Insurance Company Limited, a wholly owned Government Corporation, which purchases catastrophe and marine coverage only.

JAPAN

The Government entities generally do not insure their property. In the case of automobiles, the owners are obliged to contract a third party liability insurance to cover their automobiles.

NORWAY

Government entities operate on a so-called self-insurance basis. Some exceptions obtain for certain specialized equipment and to some extent motor vehicles.

UNITED STATES

General definition: Insurance is a system under which individuals, businesses and other organizations or entities, in exchange for payment of a sum of money (a premium), are guaranteed compensation for losses resulting from certain perils under specified conditions.

Life and health insurance: The United States Government procures life and health insurance for government employees only. The life and health insurance procurement is carried out by the Office of Personnel Management (OPM). The OPM procures insurance services from companies which are classified by the United States Standard Industrial Classification System in SIC: 6311 Life Insurance; SIC 6321 Accident and Health Insurance; and SIC 6324 Hospital and Medical Service Plans. Life insurance covers those companies primarily engaged in underwriting life insurance. Accident and health insurance includes companies primarily engaged in underwriting accident and health insurance. Hospital and medical service plans include companies primarily engaged in providing hospital, medical, and other health services to subscribers or members in return for specified subscription charges, providing these services for the most part through contracts with participating hospitals and physicians.

Besides insurance-type health benefits plans, comprehensive medical plans (commonly called Maintenance Organizations (HMO's)) are involved in providing health benefits to government employees. There are two basic types of HMO's. The first, called a group/staff model HMO, delivers medical services at one or more locations, using physicians under contract or physicians who are employees of the HMO. The second, known as an Individual Practice Association, makes contractual arrangements with doctors in the community who treat HMO members in their own offices.

Additionally, the United States Government sells flood and crime insurance and purchases insurance-related services in connection with these programmes. The flood and crime insurance programmes are administered by the Federal Emergency Management Agency (FEMA). FEMA's flood insurance programme grew out of the fact that this type of insurance is generally unavailable from private sector insurance companies. The programme is based on an agreement between local communities and the Federal government that if a community will implement programmes to reduce future flood risks, the Federal government will make flood insurance available within the community as a financial protection against flood losses when they do occur. Under the crime insurance programme, the Federal government makes crime insurance available to communities where private sector insurance companies do not offer such insurance. In the case of both the flood and crime insurance programmes, the United States Government contracts with a private company to administer the government insurance, but does not contract with private sector insurance companies to provide this type of insurance.

(c) MANAGEMENT CONSULTING

CANADA

For the purposes of this statistical information provided in the study, the definition is as follows: "Management Consulting is an advisory service contracted for and provided to organizations by specially trained and qualified persons who assist in an objective and independent manner

client organizations to identify management problems, analyse such problems, recommend solutions to these problems, and help when requested in the implementation of solutions".

UNITED STATES

The management consulting service industry consists of establishments furnishing a wide variety of general or specialized services on a contract or fee basis. Management consulting involves independent and objective study, analysis, counsel and advice to the management of private and public organizations regarding the organization and activities of the entity, and providing assistance to the entity in implementing the advice. The diverse services offered by the industry include strategic planning, systems research and development, personnel development. (For a more detailed "description of activities", reference is made to GPR/W/70, page 2.)

(d) FREIGHT FORWARDING

UNITED STATES

The acceptance for compensation of responsibility as an agent of the shipper to oversee the movement of goods and merchandise to specified destinations including, but not limited to, providing or arranging for receiving, packaging, insuring, storing, document preparation and transmittal, customs clearance, and transportation and delivery of such goods and merchandise by the most appropriate and efficient mode or modes of transport, including selection of the carrier or carriers.